

## **TENTATIVE RULINGS for CIVIL LAW and MOTION**

### **November 9, 2009**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

#### **TENTATIVE RULING**

**Case:** **Jimenez v. Maharaja Motors, LLC**  
**Case No. CV CV 08-1012**

**Hearing:** **November 9, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's motion for entry of judgment pursuant to Code of Civil Procedure section 664.6, is **GRANTED**. (Code Civ. Proc., § 664.6; Civil Trial Minutes dated June 3, 2009; Declaration of Roger Hahn.) Judgment is entered in the amount of \$26,000.00.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

#### **TENTATIVE RULING**

**Case:** **In re Matter of Cornwell**  
**Case No. CV P2 09-190**

**Hearing Date:** **November 9, 2009** **Department Fifteen** **9:00 a.m.**

The petitioner and the minor are directed to appear or to show good cause why the petitioner and minor should not be required to appear. (Cal. Rules of Court, rule 7.952.) If the petitioner and the minor choose to show good cause, they should do so by filing of a declaration before the hearing setting the forth the facts supporting good cause. If the parties fail to appear at the hearing and the court has not excused their personal appearance, the petition will be denied without prejudice. No request for a hearing is required.

### TENTATIVE RULING

**Case:** Ormiston v. California Youth Soccer Association  
Case No. CV PO 08-236

**Hearing Date:** November 9, 2009      **Department** Fifteen      **9:00 a.m.**

**Defendants California Youth Soccer Association and Davis Soccer League's Motion for Summary Judgment or, in the alternative, Motion for Summary Adjudication:**

Defendants' motions for summary judgment, or in the alternative, summary adjudication is **GRANTED**. (Code Civ. Proc., 437c, subd. (p)(2).) Defendants met their burden of showing that the causes of action for negligence and premises liability are barred as a result of the execution of the release agreement contained in the "U.S. Youth Soccer Membership Form" as a matter of law. (*Benedek v. PLC Santa Monica, LLC* (2002) 104 Cal.App.4<sup>th</sup> 1351, 1356; *Sanchez v. Bally Total Fitness Corp.* (1998) 68 Cal.App.4<sup>th</sup> 62, 65-69; *Paralift, Inc. v. Superior Court* (1993) 23 Cal.App.4<sup>th</sup> 748, 755; *Aaris v. Las Virgenes Unified School Dist.* (1998) 64 Cal.App.4<sup>th</sup> 1112, 1120; Defendants' Undisputed Material Facts 1, 20, 24, 26; Plaintiffs' response to Defendants' Undisputed Material Facts 28 & 29; Plaintiffs' Undisputed Material Facts 1-6, 15-16, 19, 30-32; Deposition of Connie Ormiston, p. 80:9-14; Deposition of Aine Ormiston pp. 78:2-79:25, 80:5-11, 82:12-23, 84:1-85:2.)

Defendants also met their burden of showing that the causes of action for negligence and premises liability are barred by the doctrine of the assumption of the risk. Plaintiffs did not submit admissible evidence showing that: a sprinkler head, protruding, or otherwise caused plaintiff to fall, that Aine Ormiston impacted a sprinkler head, that the alleged impact of Aine Ormiston's knee with the sprinkler head caused Aine Ormiston's injury, that defendant increased the risk of playing soccer by having sprinkler heads installed on the field of play, or that Defendant City of Davis failed to inspect or maintain the sprinklers which created a dangerous condition that caused Aine Ormiston's injuries. (*Knight v. Jewett* (1992) 3 Cal.4<sup>th</sup> 296, 308-309; *Shin v. Ahn* (2007) 42 Cal.4<sup>th</sup> 482, 498; *Yarber v. Oakland Unified School District* (1992) 4 Cal.App.4<sup>th</sup> 1516, 1519-1520; *Connelly v. Mammoth Mountain Ski Area* (1995) 39 Cal.App.4<sup>th</sup> 8; Plaintiff's Undisputed Material Facts 1-49; Deposition of Connie Ormiston, p. 80:9-14; Deposition of Aine Ormiston pp. 78:2-79:25, 80:5-11, 82:12-23, 84:1-85:2.)

Plaintiff's objections to Defendants' evidence numbers 1-5 are **SUSTAINED**. Plaintiffs' objection to evidence number 6 is **OVERRULED**. (*Sanchez v. Bally Total Fitness Corp.* (1998) 68 Cal.App.4<sup>th</sup> 62; 65-66; Dec. of Gudev Mann, ¶¶ 1-6; Plaintiffs' response to Defendants' Undisputed Material Facts 28 & 29; Plaintiffs' Undisputed Material Facts 29-32, 45-49.)

Defendants' objections to Plaintiffs' evidence numbers 1-4, 6-11 and 15-24 are **SUSTAINED**. Defendants' objection to Plaintiffs' evidence numbers 5, and 12-14 are **OVERRULED**.

**Defendant City of Davis' Motion for Summary Judgment or, in the alternative, Summary Adjudication:**

Defendant's motions for summary judgment, or in the alternative, summary adjudication is **GRANTED**. (Code Civ. Proc., 437c, subd. (p)(2).) Defendant met its burden of showing that the causes of action for negligence and premises liability are barred as a result of the execution of the release agreement contained in the "U.S. Youth Soccer Membership Form" as a matter of law. (*Benedek v. PLC Santa Monica, LLC* (2002) 104 Cal.App.4<sup>th</sup> 1351, 1356; *Sanchez v. Bally Total Fitness Corp.* (1998) 68 Cal.App.4<sup>th</sup> 62, 65-69; *Paralift, Inc. v. Superior Court* (1993) 23 Cal.App.4<sup>th</sup> 748, 755; *Aaris v. Las Virgenes Unified School Dist.* (1998) 64 Cal.App.4<sup>th</sup> 1112, 1120; Defendants' Undisputed Material Facts 1, 20, 24, 26; Plaintiffs' response to Defendant's Undisputed Material Facts 28 & 29; Plaintiffs' Undisputed Material Facts 1-6, 15-16, 19, 30-32; Deposition of Connie Ormiston, p. 80:9-14; Deposition of Aine Ormiston pp. 78:2-79:25, 80:5-11, 82:12-23, 84:1-85:2.)

Defendant also met its burden of showing that the causes of action for negligence and premises liability are barred by the doctrine of the assumption of the risk. Plaintiffs did not submit admissible evidence showing that: a sprinkler head, protruding, or otherwise caused plaintiff to fall, that Aine Ormiston impacted a sprinkler head, that the alleged impact of Aine Ormiston's knee with the sprinkler head caused Aine Ormiston's injury, that defendant increased the risk of playing soccer by having sprinkler heads installed on the field of play, or that Defendant City of Davis failed to inspect or maintain the sprinklers which created a dangerous condition that caused Aine Ormiston's injuries. (*Knight v. Jewett* (1992) 3 Cal.4<sup>th</sup> 296, 308-309; *Shin v. Ahn* (2007) 42 Cal.4<sup>th</sup> 482, 498; *Yarber v. Oakland Unified School District* (1992) 4 Cal.App.4<sup>th</sup> 1516, 1519-1520; *Connelly v. Mammoth Mountain Ski Area* (1995) 39 Cal.App.4<sup>th</sup> 8; Plaintiffs' Undisputed Material Facts 1-49; Deposition of Connie Ormiston, p. 80:9-14; Deposition of Aine Ormiston pp. 78:2-79:25, 80:5-11, 82:12-23, 84:1-85:2.)

Defendant also met its burden of showing that the causes of action for negligence and premises liability are barred by Government Code section 831.7. (Gov. Code, § 831.7; Defendant's Undisputed Material Facts 1, 3, 12, 15, 20; Plaintiffs' Undisputed Material Facts 1, 3, 4-6; Deposition of Connie Ormiston, p. 80:9-14; Deposition of Aine Ormiston pp. 78:2-79:25, 80:5-11, 82:12-23, 84:1-85:2.)

Plaintiffs' objections to Defendants' evidence numbers 1-5 are **SUSTAINED**. Plaintiffs' objection to evidence number 6 is **OVERRULED**. (*Sanchez v. Bally Total Fitness Corp.* (1998) 68 Cal.App.4<sup>th</sup> 62; 65-66; Dec. of Gudev Mann, ¶¶ 1-6; Plaintiffs' response to Defendant's Undisputed Material Facts 28 & 29; Plaintiffs' Undisputed Material Facts 29-32, 45-49.)

Defendant's objections to Plaintiffs' evidence numbers 1-4, 6-11, and 15-24 are **SUSTAINED**. Defendant's objection to Plaintiffs' evidence number 5, and 12-14 are **OVERRULED**.

If no hearing is requested, Defendants are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

#### TENTATIVE RULING

**Case:** Page v. Regents of the University of California  
Case No. CV PM 08-228

**Hearing Date:** November 9, 2009 Department Fifteen 9:00 a.m.

Plaintiffs Robert S. Page's and Yun Young Page's motion to compel Defendant Textron Inc. dba E-Z-Go to prepare further responses to special interrogatories, set number two, is **GRANTED IN PART**. (Code Civ. Proc., §§ 2023.030, 2030.300; Civ. Code, § 3295; *Jabro v. Superior Court* (2002) 95 Cal.App.4<sup>th</sup> 754, 757.) Under the plain language of Civil Code section 3295(c), plaintiff has two options to obtain evidence of punitive damages: (1) plaintiff may move for a pretrial discovery order pertaining to the defendant's financial condition; or (2) plaintiff may subpoena witnesses and documents to be available at trial to establish the defendant's financial condition and the defendant may be required to identify documents and witnesses employed by or related to the defendant to testify to those facts. (Civ. Code, § 3295, subd. (c); *Kelly v. Haag* (2006) 145 Cal.App.4<sup>th</sup> 910, 919.) Defendant shall provide further responses to special interrogatories, set number two, numbers 14 and 17.

Defendant's objections to special interrogatories, set number two, numbers 15, 16, 18-19, except the objection concerning the definition of "YOU" including Textron, Inc., as opposed to the E-Z-Go Division of Textron, Inc., are **SUSTAINED**. Defendant's objections to special interrogatories numbers 14 and 17 are **OVERRULED**. A punitive damage award is based on defendant's financial condition at the time of trial. (*Kelly v. Haag* (2006) 145 Cal.App.4<sup>th</sup> 910, 919.) "As the court explained in (citation) because punitive damages are intended to deter wrongful conduct and not destroy the defendant, "the Supreme Court articulated a standard calling for *meaningful evidence* of a defendant's *financial condition* .... [T]he high court consistently speaks in terms of 'financial condition' [citation] or 'net worth' [citation] or the 'defendant's ability to pay.'" (*Id.* at p. 916.)

Plaintiffs' and defendant's requests for sanctions are **DENIED**. (Code Civ. Proc., § 2030.300, subd. (d).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, is required.

#### TENTATIVE RULING

**Case:** Preferred Western Collection, Inc. v. Common Grounds Coffee, Inc.  
Case No. CV G 09-294

**Hearing Date:** November 9, 2009 Department Fifteen 9:00 a.m.

Plaintiff's unopposed motion to compel responses to its special interrogatories, requests for admission, and request for production of documents, sets no. one to the defendant is

**GRANTED.** (Code Civ. Proc., §§ 2030.250, 2030.290, 2031.250, 2031.300, and 2033.210 and 2033.240.) Defendant's unverified discovery responses are the equivalent of no response at all. Additionally, defense counsel did not sign the discovery responses even though they contain objections. (Code Civ. Proc., §§ 2030.250, subd. (c), 2031.250, subd. (c), and 2033.240, subd. (c).) The unopposed request for monetary sanctions against Common Grounds Coffee, Inc. is **GRANTED** in the amount of \$780.00. (Cal. Rules of Court, rule 3.1348.)

Plaintiff shall serve counsel for the defendant with a copy of this order by no later than November 12, 2009. Defendant shall serve verified answers to the above discovery requests, without objections, and responsive documents **by no later than November 27, 2009.**

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

#### **TENTATIVE RULING**

**CASE:** **Ramos Oil Co., Inc. v. Delta Removal & Demolition, Inc.**  
**Case No. CV G 08-1906**

**Hearing Date:** **November 9, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's unopposed motion for attorney's fees is **GRANTED.** (Civ. Code, § 1717.) Ramos Oil Co., Inc. shall recover \$5,239.37 in attorney's fees from Delta Removal & Demolition, Inc., Gordon Randall Bingham a/k/a Gordon R. Bingham a/k/a Randy Bingham a/k/a Gordon Bingham a/k/a/ Randall G. Bingham a/k/a Gordon Randy Bingham, and Brian Dale Carpenter a/k/a Brian Carpenter a/k/a B.D. Carpenter, jointly and severally.

Plaintiff's motion for court costs is **DENIED.** (Cal. Rules of Court, rule 3.1700(a).) Plaintiff did not timely file a verified memorandum of costs. The declaration of Vanessa Montague does not contain the required verification.

Plaintiff shall serve the defendants with a copy of this ruling by no later than November 13, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

#### **TENTATIVE RULING**

**Case:** **Sternes v. Aspen Pest Management**  
**Case No. CV PO 08-3001**  
**Barrow v. Aspen Pest Management**  
**Case No. CV PO 09-662**

**Hearing Date:** **November 9, 2009** **Department Fifteen** **9:00 a.m.**

Aspen Pest Management's motion to consolidate is **DENIED WITHOUT PREJUDICE**. Case Nos. CV PO 08-3001 and CV PO 09-662 involve many issues that are unique to each case. Westgate Village Apartments and Tandem Properties are defendants in Case No. CV PO 08-3001 only.

**TENTATIVE RULING**

**Case:** **WT Southport I, LLC v. Kajola Holdings, LLC**  
**Case No. CV CV 09-169**

**Hearing Date:** **November 9, 2009** **Department Fifteen** **9:00 a.m.**

The unopposed motion to strike the answer filed for Kajola Holdings, LLC is **GRANTED WITH LEAVE TO AMEND**. It does not appear from the face of the answer that Kajola Holdings, LLC is represented by counsel. The answer filed for Kajola Holdings, LLC on March 13, 2009, is **STRICKEN** *nunc pro tunc*.

The Court *sua sponte* strikes the entry of default filed on May 6, 2009, against Olabode Owoyele *nunc pro tunc*. Mr. Owoyele, acting *in pro per*, filed an answer to the complaint on March 13, 2009.

Plaintiff shall serve a copy of this ruling on Kajola Holdings LLC and Olabode Owoyele by no later than November 11, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

**TENTATIVE RULING**

**Case:** **Yellow Book Sales & Distribution v. Sierra Hart Auto Center**  
**Case No. CV G 09-1637**

**Hearing Date:** **November 9, 2009** **Department Fifteen** **9:00 a.m.**

The unopposed demurrer is **OVERRULED**. (4 Witkin, Cal. Procedure (5<sup>th</sup> ed. 2008) Pleading, §§ 553 and 557, pp. 680-682 and 685-686.) The complaint contains all of the general averments required for common counts. (Complaint ¶¶ 5-10.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.